HOUSE MAJORITY OFFICE

Representative Adam Hasner, Majority Leader

MAJORITY MEMO

Gaming on Indian Lands and Pari-Mutuel Permitholders Senate Bill 788

- The Legislature was forced to engage on this issue because of Governor Crist's actions that were thrown out by the Florida Supreme Court.
- We can still bring significant revenues to Florida without irreparably harming industries important to Florida's economy. The new Compact parameters require that the Seminole Tribe remove card games from several of its facilities and cooperate with more oversight of its gaming practices.
- The Legislature's proposals ensure that the expansion of gambling proposed in the original Compact is curtailed and loopholes in current law are closed.

Senate Bill (SB) 788 ensures that we get the best deal for Florida's future based on the hand we have been dealt. While we would not have been forced into a compact had Governor Crist not initiated by entering into an illegal Indian Gaming Compact (Compact), I am pleased that we have resolved this issue by responsibly considering all of the industries that would be affected by a compact and ensuring that Florida received a benefit commensurate with those afforded the Tribe. Accepting the terms of the voided Compact as is would have ignored our Constitutional responsibilities and subject Floridians to short term fixes with long term consequences. Clearly, waiting to get it done right rather than taking the first deal offered by the Seminole Tribe has yielded a better result.

The New Compact Terms Provide a Better Deal and Improved Protections for the State

The compact provided for in SB 788 will allow for a *\$150 million* guaranteed minimum annual payment.

The Tribe will be required to remove banked card games at all facilities outside of Broward and Hillsborough Counties within 90 days of the Compact's execution, and the State will keep all payments made by the Tribe under the voided Compact.

SB 788 proposes new compact terms to be negotiated by the

Governor and Tribe by August 31, 2009 and is subject to future Legislative approval. Moreover, if provisions relating to covered games, the amount of revenue sharing payments, suspension or reduction of payments, or exclusivity are amended, then these amendments are also subject to Legislative ratification. The terms of the new compact are better economically for the state while also providing for more protections and oversight.

Under these new terms the Tribe will have exclusivity for the operation of Class III slots outside of Miami-Dade and Broward Counties, will have the exclusive right to conduct banked card games (Black Jack, Chemin de fer and Baccarat) in the State, but limited to Broward and Hillsborough Counties only, and will be able to offer No-limit Poker at all seven Tribal facilities. These changes will allow for revenue sharing but modify the terms of sharing by providing for a \$150 million guaranteed minimum annual payment instead of the variable guaranteed minimum annual payments in the voided Compact. The Tribe will be required to remove banked card games at all facilities outside of Broward and Hillsborough Counties within 90 days of the compact's execution, and the State will keep all payments made by the Tribe under the voided Compact. Card games will be removed from the Brighton and Immokalee facilities and additionally will no longer be eligible to be expanded to the Big Cypress facility.

The State's revenue share will be as follows:

\$0 - \$2.5 billion: 12% net win up to \$300 million
\$2.5 - \$3 billion: 15% net win up to \$450 million
\$3 - \$4 billion: 20% net win up to \$800 million
\$4 - \$4.5 billion: 22.5% net win up to \$1.012 billion

• > \$4.5 billion: 25% of net win

"Net win" is gross gaming revenue, which is defined in the new compact terms as the difference between gaming wins and losses before deducting costs and expenses. The Tribe will pay an additional amount equal to 3% of the State's revenue share to offset impacts on local governments. The revenue share will not be reduced unless class III games are authorized in Florida <u>and</u> the Tribe's net win falls below \$1.37 billion. Finally, while the voided Compact did not include provisions relating to payment of state sales tax on all sales to non-tribal members, the new compact terms require the Governor to negotiate agreements for the collection and remittance of all taxes, including sales taxes, with the Tribe, which will then be subject to Legislative ratification. Moreover, the Tribe must use its best efforts to spend its revenue in Florida and acquire goods and services from Florida-based vendors.

The new compact terms allow for greater oversight and protection by the State than the voided Compact by authorizing the Division of Pari-mutuel Wagering at the Department of Business and Professional Regulation (the Division) to inspect both public and non-public areas of Tribal casinos with concurrent notice and conduct unlimited random inspections. Moreover, the Tribe is required to maintain a central computerized reporting and auditing system and comply with the Division's uniform reporting requirements just as the State's other pari-mutuel facilities which offer slot machine play must do.

Reducing the Compact's Impact on Florida's Pari-Mutuel Industry While Still Limiting the Expansion of Gaming

SB 788 reduces some of the impact that the new compact will have on the pari-mutuel industry while limiting the expansion of gaming. Among other things the bill revises the definition of "full schedule of live racing or games" to allow for a gradual increase in racing performances for quarter horse permitholders while closing the quarter horse loophole. Quarter horse permitholders are limited to a 35-mile lease restriction and can run thoroughbred races up to 50% of the time. Furthermore, the bill authorizes quarter horse permitholders to convert to a limited thoroughbred permit, and jai alai permitholders to convert to a greyhound permit if certain requirements are satisfied.

For pari-mutuel facilities in Miami-Dade and Broward Counties, SB 788 provides for a gradual reduction of the slot machine license fee from \$3 million to \$2 million and reduces the tax rate on slot machines from 50% to 35% with a guarantee of tax revenue to be that which was collected in 2008-2009. Any shortfall is assessed at the end of the year as a pro rata share on facilities licensed to operate slot machines.

The bill also modifies licensure and permit requirements for pari-mutuel facilities operating card rooms, which includes a provision that requires quarter horse permitholders to have a facility and have begun racing before an initial card room license can be issued. Daily hours of operation for card rooms are extended from 12 hours to 18 hours Monday through Friday and 24 hours on Saturday and Sunday. The bill authorizes No-limit Poker, including removal of wager limits for traditional poker and removal of buy-in limits for Texas-Hold-em in card rooms.

SB 788 is a responsible means of reducing the negative potential economic impacts associated with the voided Compact, while still limiting the expansion of gaming and bringing significant revenues to Florida.

BACKGROUND OF COMPACT

On November 14, 2007, Governor Charlie Crist and the Seminole Indian Tribe (Tribe) executed the Compact between the State and the Tribe. The Compact had been negotiated in private, with no input from or approval of the Legislature. The Compact made a number of policy decisions on behalf of the state, including the decision to allow the Tribe to offer banked card games, without regard to existing public policy such as criminal laws that prohibit the use of banked card games in Florida.

Thereafter, the Florida House of Representatives, through former Speaker Marco Rubio, filed a Petition for Writ of Quo Warranto in the Florida Supreme Court disputing the Governor's authority to bind the State to the Compact. On July 3, 2008, the Florida Supreme Court invalidated the Compact, finding that the Governor had exceeded his authority by executing the Compact absent Legislative approval.¹

Although voided, Florida's Compact with the Tribe was negotiated pursuant to the Indian Gaming Regulatory Act (IGRA), codified at 25 USCA §§2701-2721, which provides for "a system for joint regulation by tribes and the Federal Government of class II gaming on Indian lands and a system for compacts between the tribes and States for regulation of class III gaming." Class III games are any games that are not Class I (generally social games for prizes of minimal value) or Class II games (bingo or card games that are explicitly authorized or not explicitly prohibited by state law). Class III games include slot machines and banked card games such as blackjack (21), baccarat and chenim de fir.²

Federal law allows Tribes to offer Class III games when certain specified conditions are met, which include whether the games are conducted in conformity with a tribal compact between a state and Tribe that is in effect.³ If a Tribe wishes to engage in Class III games, then federal law dictates that the Tribe must request the state to enter into negotiations to establish a compact.⁴ Contrary to popular belief, the state's obligation under such request is to negotiate with the Tribe in good faith.⁵ There is no requirement that the state and Tribe reach an agreement on, or ultimately enter into, a compact.

¹ Florida House of Representatives v. Crist, 990 So.2d 1035 (Fla. 2008).

² 25 U.S.C. 2703

³ 25 U.S.C. 2710(d)(1)

⁴ 25 U.S.C. 2710(d)(3)(A)

⁵ *Id*.

If a compact is executed, then a proposed compact is submitted to the Department of Interior for approval. The Secretary of the Department has 45 days to approve or disapprove the compact, and a compact will be considered approved if the Secretary fails to act within the 45 day period. A compact becomes effective once approval of the Secretary of Interior is published in the Federal Register. If the compact has not been validly "entered into" by the state and Tribe, then it cannot be put "into effect" because it was improperly entered into, even if the Secretary of Interior published the compact in the Federal Register. In Florida's case, because the Compact was voided by the Florida Supreme Court due to the Governor's lack of authority to bind the state to the terms of the Compact, the Compact was not "validly entered into" and cannot be put "into effect."

The voided Compact was for a duration of twenty-five (25) years or revenue cycles and in the first three years, guarantees minimum payments as follows: \$100 million for the first year, paid in an initial, immediate payment of \$50 million, followed by the payment of the remaining \$50 million in equal monthly installments during the first and second revenue cycles; \$125 million in equal monthly installments in the second revenue cycle, in addition to the carry-over payments from the first year; \$150 million for the third revenue cycle, unless using the percentage rates applicable for calculating revenue sharing in the third or later years under the Compact would yield a greater amount to the State. After the third revenue cycle, the guaranteed minimum payment is set at \$100 million per revenue cycle for the remaining duration of the Compact.

Unless the guaranteed minimum in the third year and beyond are greater, the State's revenue share is calculated by applying a graduated rate to the Tribe's "net win" as follows:

- 1) 10% of amounts up to \$2 billion;
- 2) 12% of the amount between more than \$2 billion and up to \$2.5 billion;
- 3) 15% of the amount between more than \$2.5 billion and up to \$3 billion;
- 4) 20% of the amount between more than \$3 billion and up to \$4 billion;
- 5) 22.5% of the amount between more than \$4 billion and up to \$4.5 billion;
- 6) 25% of the amount that is more than \$4.5 billion.

Even though the Compact was voided, the Tribe began offering Class III slots and banked card games at several of its facilities in Florida during the pendency of the lawsuit and continues to offer those games. Additionally, the Tribe has been making revenue sharing payments to the state consistent with their position that the now-voided Compact is still valid. To date, the Tribe has paid \$100 million to the State.

BACKGROUND OF PARI-MUTUEL FACILITIES

Florida has 27 licensed pari-mutuel facilities located throughout 19 counties in the state, including 16 greyhound racing tracks, 3 thoroughbred racing tracks, 1 harness racing track, 6 jai alai frontons⁹ and 1 facility permitted to conduct limited intertrack wagering.¹⁰ At this time, there are 9 quarter horse permitholders, none of whom hold a license to race quarter horses. 21 of Florida's pari-mutuel facilities operate card rooms.

For pari-mutuel activities, the State maintains a permit-license structure. If an individual or entity desires to conduct pari-mutuel operations, then they must first apply for a permit to conduct such activities. Once a

⁶ 25 U.S.C. 2710(d)(8)(C)

⁷ 25 U.S.C. 2710(d)(3)(B)

⁸ See Pueblo of Santa Ana v. Kelly, 104 F.3d 1546, (10th Cir. 1997), cert. denied, 522 U.S. 807 (1997).

⁹ Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering website: http://www.myflorida.com/dbpr/pmw/index.html.

¹⁰ s. 550.6308, F.S.

permit has been obtained, the permit holder must annually apply for a license to conduct the pari-mutuel activities for which they are permitted, setting forth the number, dates and starting times of all pari-mutuel performances.

CURRENT LAW

a. Card Rooms

Card rooms are limited to operating for 12 hours a day and wagers are limited to a \$5 maximum wager with a maximum of three raises in any round of betting. Card rooms may also offer no-limit Texas Hold-em so long as the buy in is no more than \$100. When tournaments are held, they are subject to the same wager and buy-in limitations.

b. Quarter Horse Racing

Quarter horse racing is treated differently than other forms of pari-mutuel horse racing operations in Florida. Quarter horse operations are exempt from such requirements as application procedures, limitations on changes in ownership, assignment or transfer of the permit, and applicants need not provide the level of specificity related to financial information and business plans that must be provided to the state. Moreover, new permits do not have to be approved by referendum if the facility is located in a county that has already approved another pari-mutuel permit. Additionally, once a quarter horse permit is granted, the permit-holder may obtain a license to operate a card room after filing to run only one race a year.

c. Class III Slots

In 2004, Florida's voters approved an initiative petition that amended the Florida Constitution to allow for class III slots at pari-mutuel facilities in Miami-Dade and Broward Counties subject to a final county-level vote of approval in each county. In 2005, Broward County voters approved slots for their county, granting the right to offer Class III slots at 4 facilities. Miami-Dade voters initially rejected slots in 2005; however, in 2008 the question was again placed before Miami-Dade voters and was approved. Thus, a total of 7 facilities are eligible to offer slot machines in Miami-Dade and Broward Counties. Only 3 facilities in Broward County are currently licensed to operate Class III slot machines, none of the Miami-Dade facilities are currently licensed.

A slot machine licensee pays a license fee of \$3 million and a tax rate of 50% on slot machine revenue, which is the total cash and property, except nonredeemable credits, received by the slot machine licensee less cash, cash equivalents, credits and prizes paid to winners.

¹¹ Art. X, s. 23, Fla.Const.